IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE SEVENTH DAY OF OCTOBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE G. BIKSHAPATHY

WRIT PETITION NO : 1443 of 1995

Between:

The Sub-Divisional Officer Telecommunications,
Adoni-518 301, Kurnool.

..... PETITIONER

AND

1 S.Mastan Vali,
C/o. Mahaboob, S.I.Phones, P & T Quarters,, S.K.D.Colony
III Road, H.NO.18 Adoni, Kurnool.
2 The Chairman, Industrial Tribunal (Central),
Chandra Vihar Buildings, Nampally,
Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ, or order or directions more particularly one in the nature of Mandamus and to declare the Award dt: 24/9/1993 made in I.D.NO.71 of 1990 on the file of the Industrial Tribunal (Central) Hyderabad, as being illegal, null and viod and pass such other order or orders as this Hon'ble Court may deem fit and proper.

Counsel for the Petitioner: MR.R.S.MURTHY (ADD.CGSC)

Counsel for the Respondents: MR.P.VENKATESWARLU (not present)

The Court made the following:

ORDER:

This writ petition is filed by the Telecom Department assailing the award

passed by the Industrial Tribunal (Central), Hyderabad in I.D.No.71 of 1990, dated 24.09.1993. The first respondent raised a dispute, which was referred to the Industrial Tribunal by the Government of India for adjudication. The reference reads as follows:

> "Whether the action of the management of Telecom, (SDO, Adoni) in retrenching the workman w.e.f 30-4-1987 is justified? If not, to what relief the workman is entitled?"

2. The learned Tribunal, after considering the matter, passed an award holding that the Management was not justified in terminating the service of the workman Sri Mastanvali, with effect from 30.04.1987 and consequently directed the reinstatement of his service with full back wages and all other attendant benefits. Assailing the said award, the present writ petition has been filed by the Central Government.

3. The learned Standing counsel for the petitioner-Management submits that the order of the Tribunal is wholly illegal and without jurisdiction. He further submits that the finding recorded by the Tribunal i.e., illegal retrenchment is liable to be set aside.

4. The learned counsel for the respondent is not present. Perused the award under challenge.

5. The Tribunal has clearly found that there was a violation of Section 25(F) of the Industrial Disputes Act and therefore, passed an order of reinstatement. However, the learned counsel alternatively submits that directing the department to pay back wages is illegal and the workman has not been able to establish that he was unemployee and he could not secure any employment in spite of his efforts. He also submits that in similar situation, this Court in W.P.No.10667 of 1996, partly allowed the writ petition and denied the back wages.

6. I find force in the contention of the learned counsel for the petitioner. The award of back wages is not an automatic relief, which can be granted. Especially, when the applicant is not able to establish that he was an unemployee, in those circumstances, the matter could have been remitted to

the Labour Court. In view of long laps of time, I find that if the back wages are denied that would met the ends of justice.

7. Accordingly, the writ petition is partly allowed modifying the award to the extent of denying back wages to the petitioner from the date of termination till the date of reinstatement. However, the aforesaid period shall count for pension and other terminal benefits.

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G.BIKSHAPATHY, J

Dated 07th October, 2004.

YCR

To

1. The Chairman, Industrial Tribunal (Central),
   Chandra Vihar Buildings, Nampally, Hyderabad.

2. 2 C.D. copies.

3. 2 CCs to Govt. Pleader for Labour, High Court Buildings, A.P.,

Hyderabad (OUT).